

LFC Requester:**Eric Chenier**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☐ **Amendment** ☒
Correction ☐ **Substitute** ☐

Date 2 Feb 2016

Bill No: SB 113

Sponsor: Sen M. Papen & Rep P. Pacheco

Agency Code: 305

Short Assisted Outpatient Treatment

Person Writing Joseph M. Dworak, AAG

Title: Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **HB 198**
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

The Senate Public Affairs Committee amendment to SB 113 makes notable changes to include:

1. General clarification of language in the bill as well as changing several modal auxiliary verbs from "shall" to "may." These changes do not appear to change any substantive provisions of the bill.
2. Ensuring greater involvement by a respondent's surrogate decision-maker by adding them to service for hearing notices and granting the surrogate decision-maker an opportunity to testify during the court hearing to consider the petition for assisted outpatient treatment.
3. Clarifies that a qualified professional must provide a written proposed treatment plan to the court no later than the date of the hearing to consider the petition for assisted outpatient treatment.
4. Adds a requirement that if a respondent has executed an advance directive for mental health treatment, the qualified professional must include a copy with the proposed treatment plan provided to the court.
5. Removes the original bill's requirement that the behavioral health services division of the human services department and the interagency behavioral health purchasing collaborative, in consultation with the administrative office of the courts, will be responsible for preparing educational and training materials related to the proposed Assisted Outpatient Treatment Act.
6. Removes the original bill's proposed new sections of the Mental Health and Developmental Disabilities Code that would have required court clerks to monitor the number of matters in the court related to the Assisted Outpatient Treatment Act and also to provide periodic reports (monthly and quarterly) to the administrative office of the courts and the behavioral health services division of the human services department and the interagency behavioral health purchasing collaborative.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 113 is identical to House Bill 198 introduced by Representative Paul Pacheco.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Our office provided an earlier analysis dated January 21 for the original bill.

SB 113 imposes several short time requirements in regard to scheduling hearings and issuing decisions. Several of these time requirements could be better clarified to avoid any confusion in implementing procedures. For example Section 6 requires a court to fix a date for a hearing “no sooner than three or later than seven days after the date of service.” It is what is the initiating date is and the subsequent timeline because the term service may be problematic without further clarification. If “service” is the date of service of the notice of hearing, it is impossible to determine when the hearing must be scheduled because an actual service date cannot be guaranteed unless using electronic service methods. Instead, the hearing could be set a number of days from the date of filing the petition, and require the court to issue a notice of hearing within a certain number of days after the petition is filed.

SB 113 mandates that a respondent shall be represented by counsel at all stages of the proceeding without providing further details. It is not clear who would provide counsel if respondent is pro se. This role may be served by contract attorney services through the administrative office of the courts, but it should be made clear and financial obligations should be considered. Furthermore, securing an attorney, whether appointed or privately obtained, may take time. Consideration should be given to how obtaining counsel would affect the short time requirements for holding a hearing (currently 3-7 days after notice of the hearing).

SB 113 provides a “right to an expeditious appeal” of a final order. It is not clear how this would be applied to the judicial system or if more specific time requirements could be included.

SB 113 Section 11 limits assisted outpatient treatment for a period not to exceed one year, but it is not entirely clear whether applications for continued periods of treatment can extend treatment for an additional period of one year or if there is an absolute limit to one year of treatment, regardless of any extensions granted.

SB 113 allows for a qualified provider to appear telephonically (or by other remote means) in a hearing regarding the petition for an order to require treatment. Consideration should be given to confrontation clause issues in the event the respondent was ordered to a type of confinement.

ALTERNATIVES

HB 198 is an alternative, but the language appears to be identical to the original SB 113.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

Amendments were offered by the Senate Public Affairs Committee and the bill has been referred to the Senate Judiciary Committee.